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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,524	03/26/2004	John W. Guerin	5085-0001	1200
28777	7590	08/11/2004	EXAMINER	
MICHAEL L. DIAZ, P.C. 555 REPUBLIC DRIVE, SUITE 200 PIANO, TX 75074			GRILES, BETHANY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,524

Applicant(s)

GUERIN, JOHN W.

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. New corrected drawings are required in this application because the current drawings do not seem to have been drafted by a draftsman. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wicklund US6105304.

3. Regarding claims 1 and 9, Wicklund discloses a tail with a substantially concentric base 18, a plurality of strands affixed through the eye to the crank bait (refer to figure 5, which shows the skirt attached adjacent to an eye (unnumbered)), and said tail providing movement or the plurality of strands as the crank bait moves through the water.

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4. Regarding claim 2, Wicklund discloses the base 18 includes an opening having elastomeric characteristics to accommodate passage of the eye through the opening, thus holding the concentric base in place upon the eye (col 2, line 64-col 3, line 3).

5. Regarding claim 4, Wicklund discloses that the tail provides a counteracting motion corresponding to each forward motion of the crank bait, as the act of an object being pulled through the water would create resistance, and Wicklund does disclose that the lure is retrieved through the water (col 3, lines 54, 55).

6. Regarding claim 10, Wicklund discloses each cycle strand is biased to a curved shape (refer to figure 2 of Wicklund, which depicts a strand in cross section, clearly showing that it is curved).

7. Claims 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gressard US3104486.

8. Regarding claim 5, Gressard discloses a crank bait having a rearwardly mounted eye 18 a bill 22 mounted on a forward portion of the crank bait; and a tail 30 having a concentric base 40 and a plurality of strands, said tail 30 being affixed through the rearwardly mounted eye 18 to the crank bait; the tail providing movement as the crank bait moves through water (col 2, line 27).

9. Regarding claim 6, Gressard discloses the concentric base 40 has elastomeric characteristics (col 2, lines 39-41).

10. Regarding claim 7, Gressard discloses the use of a split ring 36.

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11. Regarding claim 8, Gressard discloses that the tail provides a counteracting motion corresponding to each forward motion of the crank bait (col 2, lines 27 and 28).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wicklund in view of Accetta US2051978.

15. Regarding claim 3, Wicklund substantially discloses the skirt as detailed in claims 1 and 2.

16. Wicklund does not disclose the use of a split ring.

17. Accetta discloses the use of a split ring in combination with a fishing lure having a skirt (refer to figure 2 of Accetta).

18. It would have been obvious to one of ordinary skill in the art, and an obvious matter of design choice, as the use of a split ring has previously been disclosed, to choose a split ring as an eye in the lure of Wicklund, as the eye of Wicklund and the split ring of Accetta are functional equivalents and therefore interchangeable.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Link US5899015; Winter US1832172; Accetta US2208827; Phillips US2277350; Frederiksen, Sr. US3199244; Charron US3654724; Messacar US4006551; Wilson US5918406; Dotson US6233863.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



blg

Bethany L. Griles
Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
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8/6/07